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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,013	06/22/2001	Karen King	18938-2363001	8492

7590 02/26/2003

Patrick R. Scanlon  
Pierce Atwood  
One Monument Square  
Portland, ME 04101

EXAMINER

SALDANO, LISA M

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/888,013

Applicant(s)

KING ET AL.

Examiner

Lisa M. Saldano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☒ Claim(s) 14, 15 and 17-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. Claim 7, line 3 recites the limitation regarding “underwater structure.” There is insufficient antecedent basis for this limitation in the claim. Please clarify if the applicant means to use “support structure.”

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

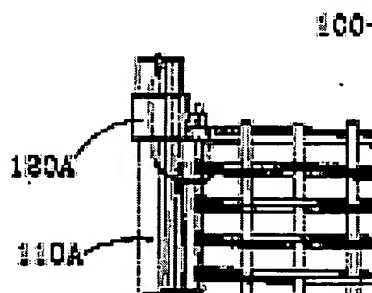
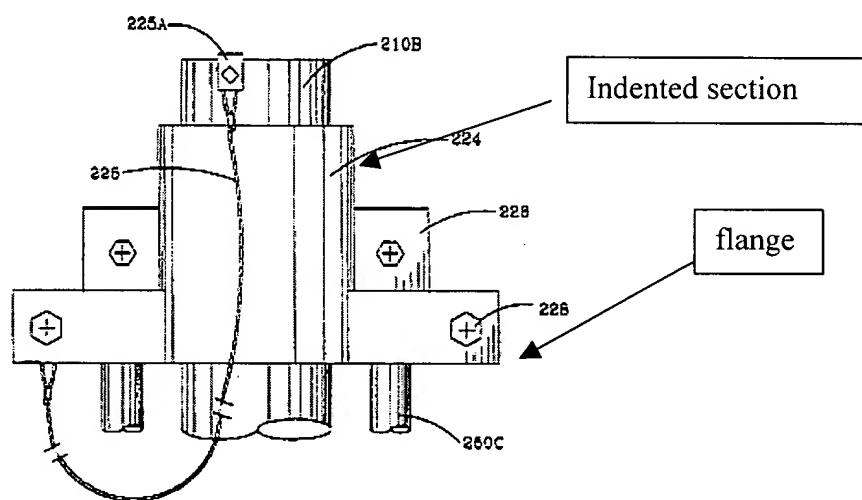
2. Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bailey et al (5,348,419).

Regarding claims 1 and 8, Bailey et al disclose a breakwater system (see Fig.9) comprising a curtain 160, support structure 110A, a first attachment sleeve 120A and a second attachment sleeve 120C slidingly mounted to the support structure. The curtain 160, as broadly claimed by the applicant, possesses energy absorbing qualities.

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Regarding claims 2 and 3, Bailey et al disclose the breakwater system described above further comprising looped sections 169 threaded in the curtain each at an opposing end of the curtain (see Fig. 10).

Regarding claims 6-7, Bailey et al disclose the breakwater system described above wherein the attachment sleeves 120 comprise brackets having a central indented section and first and second flanges formed on the sides of the indented section. The indented sections enclose corresponding parts of the support structure and the flanges sandwich the curtain.



3. Claims 11-13, 16 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruhlman (3,691,773).

Regarding claim 11, Ruhlman discloses a breakwater system comprising first and second support members extending from either edge of curtain at foam support 42 down to the support anchor 20 located in the water-body's floor near loop 32 (see Figs.5 and 7). Both components of each of the first and second support elements are generally rigid. Ruhlman further discloses a curtain 10 attached between the support elements being partially within the vertical extent of the support members wherein the curtain may freely rise and fall in response to wave action (see Figs.8 and 9).

Regarding claims 12 and 13, Ruhlman discloses a breakwater system wherein the first and second support members include top frame section 42 and bottom frame section anchor 20. Both are pivotally connected at loop 32. A portion of the curtain is attached to top frame section and a portion is attached to the bottom frame section through loop 32.

Regarding claim 16, Ruhlman discloses a breakwater system wherein anchor 20 is attached to a base plate near the waterbody's floor (see Fig. 7). The frame assembly extends upward from the base plate.

Regarding claims 21-23, Ruhlman discloses a breakwater system wherein the curtain 10 as broadly claimed by the applicant has energy absorbing properties. The curtain contains floatation device 16 along the upper edge of the curtain.

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al. as applied to claim 2 above in view of Parker (6,079,350).

Bailey et al disclose the breakwater system as described above. However, Bailey et al fail to disclose the use of hook and loop fasteners to fasten the curtain to the support structure.

Parker teaches the use of hook and loop fasteners 46,48 to attach a fabric 22 to a support structure 20.

It would have been obvious to one of ordinary skill at the time the invention was made to modify Bailey et al's device to incorporate the use of hook and loop fasteners, as seen in Parker, to attach the curtain to the support structure since the applicant does not disclose criticality for the use of the hook and loop fasteners and because it is a very common means to attach articles to one another in any area of endeavor.

6. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al. as applied to claim 1 above in view of Ruhlman (3,691,773).

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Bailey et al disclose the breakwater system as described above. However, Bailey et al fail to disclose the use of a floatation device along the upper edge of the breakwater.

Ruhlman teaches the use of a floatation device 16 along the upper edge of a breakwater having curtain 18 and a support structure.

It would have been obvious to one of ordinary skill at the time the invention was made to modify Bailey et al's device to incorporate the floatation devices, as taught by Ruhlman, because the longer the unsupported span of the curtain, the more the potential for the curtain to sag. Ruhlman teaches that the floatation device provides support for the curtain against undesired sag (see column 4, lines 49-53).

#### ***Allowable Subject Matter***

7. Claims 14, 15 and 17-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

8. The applicant cancelled claim 5, and amended claims 1, 2, 6, 11, 13 and 15. The applicant added material that was not previously presented in the claims. For instance, the claim 1 now includes details regarding support structure for the system and attachment sleeves to mount the support structure.

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9. Applicant's arguments with respect to claim 1-23 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone numbers




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for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

lms

February 24, 2003



HEATHER SHACKELFORD  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600